

## **REMARKS**

Claims 1-3, 9, 11-12, 21-34, 43, and 45-58 were previously cancelled, and claims 4, 14-16, 18, 38, 40, 59, and 60 are currently amended. Thus, claims 4-8, 10, 14-20, 35, 37-42, 44, 59, 60, and 66-69 are presented for prosecution. Applicants respectfully assert that the subject matter of the amended claims are fully supported by the specification and drawings as originally filed at least under MPEP 2163(II)(A)(3)(a) and 2181(IV).

### **Claim Rejections - 35 USC 103**

Independent claims 16, 38, 59, and 60 and dependent claims 4-8, 10, 13-15, 17-20, 35-37, 39-42, and 44 have been rejected as being obvious over Takano (5,984,124) in view of McBride (6,761,275) and Kawchitch (3,433,380). Applicants respectfully traverse the rejection as to claims 4-8, 10, 13-20, 35-42, 44, 59, and 60 because Applicants' inventions of those claims are patentably distinguishable and not obviated by the cited references.

### **Missing Elements**

When determining whether a claim is obvious, an examiner must make "a searching comparison of the claimed invention - including all its limitations - with the teaching of the prior art." *In re Ochiai*, 71 F.3d 1565, 1572 (Fed. Cir. 1995). Thus, "obviousness requires a suggestion of all limitations in a claim." *CFMT, Inc. v. Yieldup Intern. Corp.*, 349 F.3d 1333, 1342 (Fed. Cir. 2003) (citing *In re Royka*, 490 F.2d 981, 985 (CCPA 1974)).

Applicants' amended independent claims 16, 38, 59, and 60 each recite, in one form or another, *inter alia*, a plastic closure including a closure shell, a plastic disk

retained separate from a base wall of the shell and including an annular ring, an annular rib around a radially outer edge of the disk, and an axially facing surface between the annular rib and the annular ring, and a resilient liner molded onto the annular ring, annular rib, and the axially facing surface. Furthermore, when the closure is secured to the container finish, the annular ring urges the liner into sealing engagement with a radially inner edge of a container finish, the annular rib engages the liner against a radially outer edge of the container finish, and the axially facing surface engages the liner against an axial end of the container finish.

Takano fails to teach or suggest several elements of Applicants' claims. First, Takano fails to teach or suggest a liner molded onto an annular ring of a closure disk separate from a closure shell. Second, Takano fails to teach or suggest an annular rib around a radially outer edge of a disk and for engaging a liner against a radially outer edge of a container finish when a closure is secured to the container finish. Third, Takano fails to teach or suggest that Takano's inner sealing member 11 urges the missing liner into sealing engagement with a radially inner edge of Takano's container mouth 3, or that the missing annular rib engages the missing liner against a radially outer edge of the container mouth 3, or that Takano's packing 9 has an axially facing surface that engages the missing liner against an axial end of the container mouth 3.

McBride does not cure the deficiencies of Takano. Although McBride discloses a seal layer 40 "applied" to a bottom wall 38 and a side wall 36 of a domed portion 35 of a disc 30, like Takano, McBride fails to teach or suggest that the layer 40 is molded to the disc 30 or that the layer 40 further extends onto an annular rib around a radially outer edge of the disc 30 and an axially facing surface between the rib and the domed portion 35.

Furthermore, although McBride discloses that domed portion 35 urges the sealing layer 40 into engagement with an inside surface of a container finish 50, McBride – like Takano – fails to teach or suggest that the missing annular rib engages the layer 40 against a radially outer edge of the container finish 50 or that rim 32 engages the layer 40 against the top surface 50a of the container finish 50.

Kawchitch does not cure the deficiencies of Takano and/or McBride. Contrary to the assertion in the Office Action that Kawchitch discloses a closure disc, Kawchitch discloses only a closure cap 11 and a seal 23. Kawchitch fails to teach or suggest a separate disk in addition to the cap 11 and the seal 23. Moreover, like Takano and McBride, Kawchitch fails to teach or suggest that the seal 23 is molded to the missing disk or to the cap 11. Rather, Kawchitch discloses that the seal 23 is “fit” to the cap 11. Although Kawchitch discloses that portions of the cap 11 urge portions of the seal 23 into engagement with portions of a bottle neck, Kawchitch lacks a separate disk and, thus, cannot teach or suggest that portions of the missing disk urge portions of the seal 23 into engagement with portions of the bottle neck. And, in any event, Kawchitch fails to teach or suggest that an axially facing surface between the tapered lead 20 and the flange 22 engages the seal 23 against an axial end 33 of the bottle neck. To the contrary, Kawchitch clearly shows a gap therebetween in FIG. 3. The gap is intentional and is corroborated by disclosure in Kawchitch which provides that an inner wall of the groove 19 covered by the seal 23 seats on a conical part 32 of the bottle neck and that a rounded outer edge 33B engages the seal-covered outer wall of the groove 19 with substantially line contact at 30 so that there is efficient sealing of both the inner and outer sides of the rim. (Col. 2, lines

49-55) Similarly, Kawchitch teaches that the downwardly divergent side walls of groove 19 ensure that sealing contact is made in at least two separated locations. (Col. 3, lines 29-31)

Even if, as suggested in the Office Action, various elements from Takano, McBride, and Kawchitch could be somehow combined, the combination still would lack all of the particular claimed elements of Applicants' independent claims. Consequently, the proposed combination does not meet all of Applicants' independent claim limitations, such that Applicants' independent claims have novel and nonobvious physical features over the proposed combination.

Dependent claims 4-8, 10, 13-15, 17-20, 35-37, 39-42, and 44 are allowable both by reason of dependency from their respective independent claims, and because of the additional novel limitations set forth therein.

It is noted that none of dependent claims 4-8, 10, 13-15, 17-20, 35-37, 39-42, and 44 received separate discussion in the Office Action. Accordingly, Applicants have not received any meaningful examination of these claims and any final rejection thereof would be premature and should not be made. The MPEP notes that "[p]iecemeal examination should be avoided as much as possible. The examiner ordinarily should reject each claim on all valid grounds available, avoiding, however, undue multiplication of references. MPEP 707.07(g) (emphasis added). And further, "[t]he examiner should never lose sight of the fact that in every case the applicant is entitled to a full and fair hearing, and that a clear issue between applicant and examiner should be developed, if possible, before appeal." MPEP 706.07. Because the Office Action fails to discuss any of the limitations of the dependent claims, Applicants are not able to determine how the Examiner is applying the art against those dependent claims, or even IF the Examiner has done so as required.

Therefore, Applicants cannot effectively consider any issue relating to the patentability of these claims, and cannot consider whether they should or could be amended to overcome any such issues. For at least these reasons, Applicants have not been given a full and fair hearing regarding these claims so that any further rejection cannot be made final.

#### Improper Combination

Here, there is no reason provided by any of the prior art or other evidence in the record as to why one of ordinary skill in the art would combine the cited references in an attempt to arrive at the specific subject matter claimed by Applicants.

Assuming, for the sake of argument, that the references are even combinable, an artisan of ordinary skill might – without knowledge of Applicants’ invention – seek to modify Takano with the solutions taught in McBride and Kawchitch as follows. Starting with Takano as a primary reference and reading McBride and Kawchitch for the solutions to the problems taught therein, an artisan of ordinary skill might attempt to cover the circular inner sealing member 11 of Takano’s packing with McBride’s seal layer 40 and to fit the surfaces 1a, 2a of Takano’s cap 6 with Kawchitch’s seal 23. At best, without the benefit of hindsight of Applicants’ invention, the combination might have the following results: 1) Takano’s packing 9 having McBride’s domed portion 35 covered with McBride’s seal layer 40 per the solution to the problem taught by McBride; and 2) Takano’s cap 6 having Kawchitch’s groove 19 and corresponding seal 23 per the solution to the problem taught by Kawchitch.

In summary, it is arguable whether artisans of ordinary skill would seek to modify Takano’s cap C with a combination of McBride’s teachings and Kawchitch’s teachings. And even if they would seek to do so, and assuming the combination was even possible, they would end up with something different from Applicants’ invention. But, using

only Takano as a primary reference and McBride and Kawchitch as secondary references, artisans would not seek to modify Takano in a manner beyond the teachings of McBride and Kawchitch and arrive at Applicants' claimed subject matter; unless, of course, the artisan had the hindsight benefit of seeing Applicants' invention.

Reconsideration and withdrawal of the § 103 rejection are respectfully requested.


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It therefore is believed and respectfully submitted that all claims 4-8, 10, 13-20, 35-42, 44, 59, 60, and 66-69 are allowable at this time, and favorable action is respectfully solicited.

Please charge any fees associated with this submission to Acct. No. 50-4417 (Rexam).

Respectfully submitted,

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